IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE SUBPOENA SERVED ON DAVID P. HOLLANDER	MISCELLANEOUS ACTION NO. 09-mc-00177

ORDER

AND NOW, this 4th day of November, 2009, upon consideration of the Motion to Compel Compliance with Subpoena to David Hollander[1] filed by Guidewire Software, Inc. ("Guidewire") on October 9, 2009, the opposition thereto by Accenture Global Services GmbH and Accenture LLP ("Accenture") filed on October 23, 2009, and pursuant to the referral Order from the Honorable James Knoll Gardner dated October 28, 2009, it is hereby ORDERED that the Motion is DENIED.[2]

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[1] The underlying case, Accenture Global Services GmbH, and Accenture LLP v. Guidewire Software, Inc., Civil Action No. 1:07-cv-00826-SLR, was filed on December 18, 2007 in the United States District Court for the District of Delaware. Accenture alleges, among other causes of action, patent infringement and trade secret misappropriation against Guidewire.

The Subpoena which is the subject of the instant Motion to Compel was issued on September 8, 2009 and commanded David Hollander, a former Accenture employee, to appear for a deposition on September 22, 2009.

BY THE COURT:

/s/ Henry S. Perkin
HENRY S. PERKIN,
United States Magistrate Judge

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[2] Accenture contends that service of the Subpoena did not comply with Federal Rule of Civil Procedure 45. Pursuant to Rule 45, service of a subpoena is effected by delivering a copy of the subpoena to the person named within by an adult non-party person. The Rule specifically states "[s]erving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law...." FED. R. CIV. P. 45(b)(1). The late Judge James McGirr Kelly of this District Court held in Parker v. John Doe #1, No. Civ.A. 02-7215, 2002 WL 32107937, at *2 (E.D. Pa. Nov. 21, 2002), that Rule 45 requires personal service of subpoenas. Judge Kelly cited a majority of courts that held that Rule 45 requires personal service of subpoenas. Id.(citations omitted). The proof of service for the instant Subpoena indicates that Mr. Hollander's wife, not Mr. Hollander, was personally served. Although Guidewire cites cases from other district courts holding that Rule 45 does not require personal service of subpoenas, none are controlling because they are not from this District or this Circuit. Accenture also notes that Guidewire's proof of service does not show that the required witness fee was tendered upon service of the Subpoena. Pursuant to Parker and the absence of proof that the requisite witness fee accompanied the Subpoena, service of the Subpoena was defective and the Motion to Compel will be denied.

Accenture also objects to the Subpoena on the basis that fact discovery closed on September 24, 2009, more than two weeks before Guidewire's Motion to Compel was filed. Accenture contends that Guidewire neither made a request to Accenture for a stipulation to allow additional depositions after the close of fact discovery nor made a request to the trial Judge, the Honorable Sue Robinson of the United States District Court of Delaware, to amend the Scheduling Order. In making this claim, Accenture ignores the fact that the Subpoena was served within the fact discovery deadline. Because the Subpoena was issued and compelled Mr. Hollander's attendance at a deposition within the fact discovery deadline, Accenture's objection on this basis fails.

Accenture's last objection is that Guidewire unnecessarily delayed issuing the Subpoena to Mr. Hollander and Guidewire's delay should not be rewarded. On February 10, 2009, Guidewire requested that Accenture collect additional documents from nearly forty custodians, including Mr. Hollander. Almost seven months later and following seventeen depositions of Accenture's current and former employees, Guidewire issued the deposition subpoena for Mr. Hollander. Although this seven month time period may not be an example of ideal case management by Guidewire, the fact remains that the Subpoena was issued within the discovery period. Thus, Accenture's unnecessary delay objection fails.